

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SASHA WILFRED, Derivatively on Behalf of  
Nominal Defendant ITT EDUCATIONAL  
SERVICES, INC.,

Plaintiff,

vs.

KEVIN M. MODANY, JOHN F. COZZI,  
THOMAS I. MORGAN, JOHN E. DEAN,  
JAMES D. FOWLER, JR., JOANNA T. LAU,  
VIN WEBER, SAMUEL L. ODLE, JOHN A.  
YENA, and DANIEL M. FITZPATRICK,

Defendants,

and

ITT EDUCATIONAL SERVICES, INC.,

Nominal Defendant.

**CIVIL ACTION NO. 13-cv-3110-(JPO)**

ECF CASE

**STIPULATION AND [REDACTED] ORDER**

**WHEREAS**, the initial complaint in this shareholder derivative action was filed on May 8, 2013 (Dkt. 1), and a first amended complaint was filed in this action on November 24, 2014 (Dkt. 14);

**WHEREAS**, a motion to dismiss the first amended complaint was filed by all defendants in this action on January 5, 2015 (Dkt. 15);

**WHEREAS**, on July 28, 2015, the Court consolidated a similar shareholder derivative action, *Nottenkamper v. Modany, et al.*, No. 15-cv-3390-(JPO), into the instant action (Dkt. 43) and the Court appointed Sasha Wilfred as Lead Plaintiff and his attorneys as Lead Counsel in the consolidated action (*Id.*) (the “Order”);

**WHEREAS**, the Order remains in full force and effect until such time as modified by the Court;

**WHEREAS**, the Court granted leave for Lead Plaintiff to file an amended complaint in the consolidated action (*Id.*);

**WHEREAS**, on August 11, 2015, plaintiff Janice Nottenkamper filed a motion for reconsideration of the Court's July 28, 2015 order, seeking to replace Sasha Wilfred as Lead Plaintiff and to appoint her own counsel as Lead Counsel (the "Motion for Reconsideration") (Dkt. 44);

**WHEREAS**, on August 21, 2015, Lead Plaintiff filed his Consolidated Amended Shareholder Derivative Complaint (the "Complaint") (Dkt. 47);

**WHEREAS**, on August 27, 2015, the Court adjourned the deadline for Defendants to respond to the Complaint pending resolution of the Motion for Reconsideration (Dkt. 49);

**WHEREAS**, the Parties already have engaged in extensive motion practice in this action;

**WHEREAS**, the Parties have conferred and agree that this is an appropriate time to attempt to resolve this action through mediation and seek to focus their efforts and resources on attempting to reach a resolution of this matter;

**WHEREAS**, to facilitate the Parties' efforts to effectively mediate this action, the Parties have agreed, subject to the consent of the Court, to stay all proceedings in this action, except for those relating to the pending Motion for Reconsideration, for a period of three (3) months in order to determine if this action can be resolved through mediation;

**WHEREAS**, the Parties are desirous of conducting the mediation efficiently;

**WHEREAS**, if this Court orders a stay of this action for a three-month period, the Parties will report back to the Court on the progress of their mediation efforts at the conclusion of that

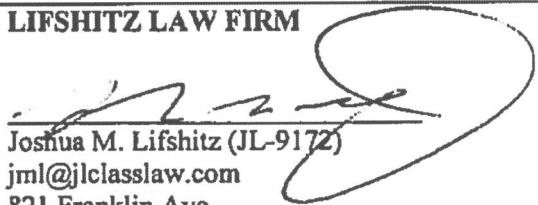
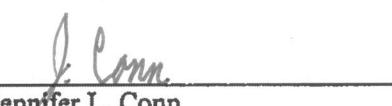
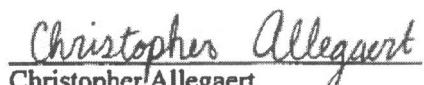
three-month period, if not sooner, to determine if any further mediation efforts are warranted or if litigation proceedings should be resumed;

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned counsel, subject to the approval of this Court, as follows:

1. All proceedings in this action, except for those relating to the Motion for Reconsideration, shall be stayed for a period of three (3) months from the date of this Order pending efforts by the Parties to resolve this action through mediation;
2. All current deadlines in this action, except for those relating to the Motion for Reconsideration, shall be adjourned;
3. The Parties will report back to the Court on the progress of their mediation efforts no later than three (3) months from the date of this Order in order to determine if any further mediation efforts are warranted or if litigation proceedings should be resumed;
4. In the event that litigation proceedings are resumed following the Parties' mediation efforts, the Parties will propose a new case schedule for the Court's approval.

Dated: New York, New York  
September 3, 2015

Respectfully submitted,

<p><b>LIFSHITZ LAW FIRM</b></p>  <p>Joshua M. Lifshitz (JL-9172) jml@jlclasslaw.com 821 Franklin Ave. Suite 209 Garden City, NY 11530 Phone: 516-493-9780 Fax: 516-280-7376</p> <p><i>Attorneys for Lead Plaintiff Sasha Wilfred</i></p>	<p><b>GIBSON, DUNN &amp; CRUTCHER LLP</b></p>  <p>Jennifer L. Conn jconn@gibsondunn.com Brad Schoenfeldt bschoenfeldt@gibsondunn.com 200 Park Avenue, 48<sup>th</sup> Floor New York, NY 10166 Phone: 212-351-4000 Fax: 212-351-4035</p> <p>Wayne W. Smith (<i>pro hac vice</i>) wsmith@gibsondunn.com 3161 Michelson Drive Irvine, CA 92612-4412 Phone: 949-451-3800 Fax: 949-451-4220</p> <p><i>Attorneys for Defendants Kevin M. Modany, John F. Cozzi, Thomas I. Morgan, John E. Dean, James D. Fowler, Jr., Joanna T. Lau, Vin Weber, Samuel L. Odle, John A. Yena, Daniel M. Fitzpatrick</i></p> <p><b>ALLEGAERT BERGER &amp; VOGEL LLP</b></p>  <p>Christopher Allegaert Christopher Allegaert CAllegaert@abv.com Richard Crisona RCrisona@abv.com 111 Broadway, 20th Floor New York, NY 10006 Phone: 212-571-0550 Fax: 212-571-0555</p> <p><i>Attorneys for Nominal Defendant ITT Educational Services, Inc.</i></p>
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**SO ORDERED.**



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J. PAUL OETKEN  
United States District Judge

September 16, 2015